

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MASSACHUSETTS MUTUAL LIFE INSURANCE
COMPANY,

Plaintiff,

v.

MERRILL LYNCH, PIERCE, FENNER &
SMITH INC.; DEUTSCHE BANK
SECURITIES INC.; GOLDMAN, SACHS &
CO., INC; J.P. MORGAN SECURITIES LLC;
and RBS SECURITIES INC.,

Defendants.

Civil Action No. 3:11-30285-MAP-RBC

**JOINT MOTION FOR APPROVAL OF STIPULATION AND
[PROPOSED] ORDER FOR ADOPTION IN THIS ACTION OF
MAGISTRATE NEIMAN'S MARCH 5, 2013 MEMORANDUM AND ORDER
WITH REGARD TO PLAINTIFF'S MOTIONS FOR DETERMINATION
ON ITS EXPERT DISCOVERY SCHEDULE**

WHEREAS, on October 29, 2012, Plaintiff Massachusetts Mutual Life Insurance Company ("MassMutual" or "Plaintiff") and defendants Merrill Lynch, Pierce, Fenner & Smith Inc., Deutsche Bank Securities Inc., Goldman, Sachs & Co., J.P. Morgan Securities LLC and RBS Securities Inc. (collectively, "Defendants") submitted a Joint Statement Regarding Proposal for Expert Discovery, in which MassMutual requested an order setting a schedule for an early determination of issues related to a sampling methodology. (Dkt. No. 92.) Defendants opposed MassMutual's request. (*Id.*) An order has not yet been issued in connection with the Joint Statement;

WHEREAS, on February 11, 2013, in the eight MassMutual actions referred to Magistrate Judge Neiman,¹ MassMutual filed a Motion for an Order Setting a Schedule for an Early Determination of Sampling Issues, with MassMutual and defendants in those actions simultaneously submitting Competing Statements Regarding Plaintiff's Motion for Determination on Its Expert Discovery Proposal. (*See, e.g.*, Case No. 11-cv-30039, Dkt. Nos. 112, 113.);

WHEREAS, on March 5, 2013, in the eight actions, Magistrate Judge Neiman issued a Memorandum and Order With Regard To Plaintiff's Motions For Determination On Its Expert Discovery Schedule. (*See, e.g.*, Case No. 11-cv-30039, Dkt. 117 (the "March 5, 2013 Order").)

As part of that ruling, Magistrate Judge Neiman set the following schedule:

- i. Plaintiff shall designate and disclose information regarding its sampling experts in accord with FED. R. CIV. P. 26(a)(2) by April 12, 2013.
- ii. Defendants, if they wish, may take Plaintiff's expert's deposition and file their *Daubert* motion challenging Plaintiff's expert no later than May 21, 2013. By said date, Defendants also shall designate and disclose information regarding their sampling expert, if any, in accord with FED. R. CIV. P. 26(a)(2).
- iii. Plaintiff, if it wishes, may take Defendant's expert deposition and file its opposition to Defendants' *Daubert* motion by June 18, 2013, to which Defendants may reply by July 2, 2013.
- iv. The *Daubert* hearing shall take place on July 11, 2013, at 10:00 a.m. before Judge Ponsor.

¹ The eight actions are: (i) *MassMutual v. DB Structured Products, Inc., et al.*, Case No. 11-cv-30039-MAP; (ii) *MassMutual v. RBS Financial Products Inc., et al.*, Case No. 11-cv-30044-MAP; (iii) *MassMutual v. DLJ Mortgage Capital, Inc., et al.*, Case No. 11-cv-30047-MAP; (iv) *MassMutual v. Credit Suisse First Boston Mortgage Securities Corp., et al.*, Case No. 11-cv-30048-MAP; (v) *MassMutual v. JPMorgan Chase Bank, NA, et al.*, Case No. 11-cv-30094-MAP; (vi) *MassMutual v. Goldman Sachs Mortgage Company, et al.*, Case No. 11-cv-30126-MAP; (vii) *MassMutual v. Impac Funding Corporation, et al.*, Case No. 11-cv-30127-MAP; and (viii) *MassMutual v. HSBC Bank, USA, National Association, et al.*, Case No. 11-cv-30141-MAP.

WHEREAS, MassMutual and Defendants agree that, to conserve the resources of the parties and the Court, the March 5, 2013 Order shall apply in its entirety to this action, including the schedule set forth in the Order.

IT IS HEREBY STIPULATED AND AGREED by and between MassMutual and Defendants, through their undersigned counsel, subject to approval of the Court:

1. The March 5, 2013 Order shall apply in its entirety to this action;
2. Plaintiff shall designate and disclose information regarding its sampling experts in accord with FED. R. CIV. P. 26(a)(2) by April 12, 2013;
3. Defendants, if they wish, may take Plaintiff's expert's deposition and file their *Daubert* motion challenging Plaintiff's expert no later than May 21, 2013. By said date, Defendants also shall designate and disclose information regarding their sampling expert(s), if any, in accord with FED. R. CIV. P. 26(a)(2);
4. Plaintiff, if it wishes, may take Defendants' expert(s) deposition and file its opposition to Defendants' *Daubert* motion by June 18, 2013, to which Defendants may reply by July 2, 2013;
5. The *Daubert* hearing shall take place on July 11, 2013, at 10:00 a.m. before Judge Ponsor.
6. The parties shall have the same rights to appeal, or to seek reconsideration or modification of, this Order as the March 5, 2013 Order and by stipulating to this Order, the parties do not extinguish or modify any such rights.

IT IS SO ORDERED.

Dated: March 28, 2013



Michael A. Ponsor
United States District Judge

DATED: March 20, 2013

MASSACHUSETTS MUTUAL LIFE INSURANCE
COMPANY

By: John J. Egan

John J. Egan (BBO 151680)
Stephen E. Spelman (BBO 632089)
Egan, Flanagan and Cohen, P.C.
67 Market Street, P.O. Box 9035
Springfield, Massachusetts 01102
Telephone: (413) 737-0260
Fax: (413) 737-0121
ejm@efclaw.com; ses@efclaw.com

Of counsel:

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

Philippe Z. Selendy (admitted *pro hac vice*)
Jennifer J. Barrett (admitted *pro hac vice*)
51 Madison Avenue, 22nd Floor
New York, NY 10010
(212) 849-7000
Fax (212) 849-7100

A. William Urquhart (admitted *pro hac vice*)
Harry A. Olivar, Jr. (admitted *pro hac vice*)
Molly Stephens (admitted *pro hac vice*)
865 South Figueroa Street, 10th Floor
Los Angeles, CA 90017
(213) 443-3000
Fax (213) 443-3100

By /s/ Jeffrey L. McCormick

Jeffrey L. McCormick (BBO #329740)
ROBINSON DONOVAN, P.C.
1500 Main Street, Suite 1600
Springfield, Massachusetts 01115
Telephone: (413) 732-2301
Fax: (413) 785-4658
jmccormick@robinsondonovan.com

Of Counsel:

Robert H. Baron (admitted *pro hac vice*)
Karin A. DeMasi (admitted *pro hac vice*)
J. Wesley Earnhardt (admitted *pro hac vice*)
CRAVATH, SWAINE & MOORE LLP
825 Eighth Avenue
New York, NY 10019
Telephone: (212) 474-1000
Fax: (212) 474-3700
rbaron@cravath.com
kdemasi@cravath.com
wearnhardt@cravath.com

*Counsel for Defendant J.P. Morgan Securities
LLC*

By /s/ Jeffrey R. Rudman

Jeffrey B. Rudman (BBO #433380)
Andrea J. Robinson (BBO #556337)
Christopher B. Zimmerman (BBO #653854)
WILMER CUTLER PICKERING HALE AND
DORR LLP
60 State Street
Boston, MA 02109
Phone (617) 526-6000
Fax (617) 526-5000
jeffrey.rudman@wilmerhale.com
andrea.robinson@wilmerhale.com
christopher.zimmerman@wilmerhale.com

*Counsel for Defendant Merrill Lynch, Pierce,
Fenner & Smith Inc.*

By /s/ Kathy B. Weinman

Kathy B. Weinman (BBO #541993)
Azure Abuirmeileh (BBO #670325)
COLLORA LLP
100 High Street, 20th Floor
Boston, Massachusetts 02110
Telephone: (617) 371-1000
Fax: (617) 371-1037
kweinman@collorallp.com
aabuirmeileh@collorallp.com

Of Counsel:

Thomas C. Rice (admitted *pro hac vice*)
David J. Woll (admitted *pro hac vice*)
Alan Turner (admitted *pro hac vice*)
SIMPSON THACHER & BARTLETT LLP
425 Lexington Avenue
New York, New York 10017
Telephone: (212) 455-2000
Fax: (212) 455-2502
trice@stblaw.com
dwoll@stblaw.com
aturner@stblaw.com

*Counsel for Defendants Deutsche Bank Securities
Inc. and RBS Securities Inc.*

By /s/ Mark A. Berthiaume

Mark A. Berthiaume (BBO #041715)
GREENBERG TRAURIG, LLP
One International Place
Boston, Massachusetts 02110
Telephone: (617) 310-6007
Fax: (617) 310-6001
berthiaumem@gtlaw.com

Of Counsel:

Richard H. Klapper (admitted *pro hac vice*)
David M.J. Rein (admitted *pro hac vice*)
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004-2498
Telephone: (212) 558-4000

Fax: (212) 558-3588
klapperr@sullcrom.com
reind@sullcrom.com

Counsel for Defendant Goldman, Sachs & Co.

CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on this 20th day of March, 2013.

/s/ John J. Egan

John J. Egan